

Attorney's Docket No. 44276/209251 (5854-2)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Kappes, et al. Confirmation No.: 7175  
Appl No.: 09/719,340 Group Art Unit: 1648  
Filed: April 13, 2001 Examiner: Shanon A. Foley  
For: CELL-BASED METHOD AND ASSAY FOR MEASURING THE  
INFECTIVITY AND DRUG SENSITIVITY OF IMMUNODEFICIENCY  
VIRUS

June 10, 2002

Commissioner for Patents  
Washington, DC 20231

**RESPONSE TO RESTRICTION REQUIREMENT**

This is in response to the Office Action dated April 10, 2002, in which the Examiner has required restriction between Group I, namely Claims 37-49 and 65, Group II, namely Claims 50-62, Group III, namely Claims 63 and 64, Group IV, namely Claims 66-75, Group V, namely Claims 76-82, Group VI, namely Claim 83, and Group VII, namely Claims 85 and 86. Applicant hereby provisionally elects with traverse to prosecute the claims of Group I (Claims 37-49 and 65) and expressly reserves the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

Group I is drawn to immortalized cells lines and a method for detecting HIV; Group II is drawn to a method of determining HIV sensitivity to a compound; and Group III is drawn to a method for determining HIV titers. The Examiner asserts that the special technical feature of Group I is an immortalized cell line comprising specific receptors and concludes that since Groups II and III lack this feature, the claims lack unity of invention. Applicants respectfully request the Examiner to reconsider this conclusion.

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First, each of the claims of Groups I, II, and III recite a composition or a method comprising a cell line expressing the CCR5, CXCR4, and CD4 receptors. Therefore, the claims of these groups, contrary to the Examiner's conclusion, do share a common technical feature. Moreover, the claims in Groups I, II, and III have an additional shared technical feature. Specifically, each cell recited in these claims is further characterized by having stably incorporated a marker gene operably linked to a promoter, wherein expression of the marker gene occurs upon HIV infection of the cell.

PCT Rule 13.2 states that the requirement of Unity of Invention is satisfied with respect to a group of inventions when there is a technical relationship among the claimed invention involving one or more of the same corresponding "special technical features". As discussed above, the claims of Groups I, II, and III each recite a cell line characterized as 1) expressing three specific receptors and 2) having a marker gene that is expressed upon HIV infection of the cell. Consequently, the claims of Groups I, II, and III do share a common technical feature. PCT rules 13.1 and 13.2 are therefore satisfied and the Examiner is respectfully requested to withdraw the lack of unity of Invention and allow the claims of Groups I, II, and III to be examined together.

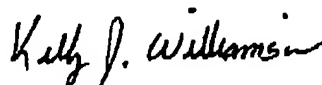
Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper.

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However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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Pamela Lockley

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